ULL pricing creates a cost-price squeeze which constitutes a barrier to entry for potential providers of facilities-based residential services.[51]

To remove this barrier to entry, BellSouth would have to lower its prices for ULLs and related UNEs substantially. Importantly, this dilemma is derivative of the rates proposed *by BellSouth*. There is no reason that such a cost-price squeeze must be a permanent condition of the market. The rates at issue were established *without* reference to TELRIC costing principles. They also suffer from the fact that the rates apply *statewide*, and are *not deaveraged* to reflect the network efficiencies realized by BellSouth in the urban centers where ACSI competes. Both of these failings can be cured either by BellSouth's voluntary filing of truly cost-based, deaveraged ULL rates, or by the adoption by the LPSC of such ULL rates. As the Commission itself recently indicated, the establishment of TELRIC-based, deaveraged ULL rates should be a precondition to the approval of any Section 271 application.[52] BellSouth has not done so, and its refusal is forestalling the development of effective local competition in Louisiana.

## IV. BELLSOUTH'S APPLICATION SHOULD BE DENIED BECAUSE IT HAS NOT FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST

As one of the first CLECs in the southern United States, ACSI has considerable direct experience with obtaining ULLs, INP and local exchange services for resale from BellSouth. Since ACSI began submitting orders in November 1996, BellSouth consistently has failed to

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[51] By contrast, in mid-1996, Ameritech voluntarily offered ULL rates in the $9.00 range in Michigan. Brooks Fiber responded by enlisting more 5,000 residential access lines in less than a year. *See Ameritech Michigan Order*, ¶ 65.

[52] *Ameritech Michigan Order*, ¶ 292.

meet the Act's requirements that it provision ULLs, INP and resale services in equivalent time-frames and at equal quality with that which it provides to itself when serving similarly situated customers.[53] As explained below, BellSouth has unreasonably delayed installation of requested services, failed to coordinate ACSI's orders, substantially disrupted service to customers for extended periods during switches to ACSI, and subjected ACSI and its customers to a series of unpredictable and unexplained service disconnections well after initial service was established. In Louisiana, BellSouth is unable meet an August 1997 request by ACSI for collocation, and BellSouth projects that it will remain unable to do so for nearly another month.

Despite ACSI's diligent efforts to work with BellSouth to resolve each of these problems, there has been no significant improvement in BellSouth's performance. Although BellSouth may claim that its provisioning problems have been cured and were otherwise the result of isolated start-up problems, its Application contains no objective evidence to support such a claim.[54] Rather, BellSouth's inability to provision services in accordance with the Act is the result of a wholesale systems failure attributable to BellSouth's unwillingness to dedicate adequate resources to meet its legal obligation to provide reasonable access to UNEs.

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[53] 47 U.S.C. § 251(c)(3); see id. § 271(c)(2)(B) (requiring nondiscriminatory access to unbundled network elements).

[54] *See Affidavit of W. Keith Milner*, ¶¶ 18-21, 41 (hereinafter, *"Milner Aff."*). In several oblique references to ACSI, Mr. Milner acknowledges "past problems" but asserts that all such problems have been corrected. *Id.* The breadth and continuing nature of ACSI's experiences belie the claim that BellSouth's inability to provision ULLs, INP and resale has been cured.

Independent auditors retained by BellSouth have confirmed what ACSI has experienced first-hand: the two Local Carrier Service Centers ("LCSCs") established by BellSouth to process orders for resale and UNEs are shockingly ill-prepared for the task. The auditors found pervasive mismanagement, incompetence and systems failures which made the timely and seamless processing of orders nearly impossible. Moreover, BellSouth's refusal to implement automated order processing procedures for ULLs and to provide detailed, accurate and timely performance measurements and standards has directly contributed to ACSI's inability to receive prompt and reliable installation of ULLs, INP and service resale from BellSouth.

Accordingly, ACSI submits that BellSouth has not met its burden of proving that the following checklist items *are available as a legal and practical matter* at the level of quality mandated by the Act and the Commission's rules and policies:[55]

(i) interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1);

(ii) nondiscriminatory access to OSS and other UNEs in accordance with the requirements of sections 251(c)(3) and 252(d)(1);

(iv) ULL provisioning;

(ix) nondiscriminatory access to telephone numbers;

(xi) number portability;

(xiii) reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2); and

(xiv) provisioning of services for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

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[55] *Ameritech Michigan Order*, ¶ 110.

Finally, ACSI notes that with respect to each of these checklist items, the Commission has not indicated that absolute perfection is required. However, the Act requires a perfect fourteen point score on the checklist — there is no other passing grade.

### A. BellSouth Is Unable or Unwilling to Provision ULLs and INP as Required by the Act

As the new player in the market, it is essential that ACSI's services be regarded by customers as at least equal in quality to the services currently provided by BellSouth. Since ACSI likely will be blamed for failed installations, regardless of who is actually at fault, it is critical to ACSI that BellSouth be able to install ULLs and INP on time and without undue customer disruption. To address these concerns, the ACSI/BellSouth Interconnection Agreement expressly provides that, wherever facilities are available, BellSouth will install ULLs by the customer due date, that cutovers will ordinarily be accomplished with a service disruption of no more than 5 minutes, and that installation intervals will be at parity to those achieved when BellSouth provides service to its own end-users. Specifically, Section IV.D. of the ACSI/BellSouth Interconnection Agreement requires each of the following:

- Installation intervals must be established to ensure that service can be established via ULLs in an equivalent time-frame as BellSouth provides services to its own customers, as measured from the date upon which BellSouth receives the order to the date of customer delivery.

- On each UNE order in a wire center, ACSI and BellSouth will agree on a cutover time at least 48 hours before that cutover time. The cutover time will be defined as a 30-minute window within which both the ACSI and BellSouth personnel will make telephone contact to complete the cutover.

- Within the appointed 30-minute cutover time, the ACSI contact will call the BellSouth contact designated to perform cross-connection work and when the BellSouth contact is reached in that interval, such work will be promptly performed.

- The standard time expected from disconnection of a live Exchange Service to the connection of the UNE to the ACSI collocation arrangement is 5 minutes.

- If ACSI has ordered INP as part of a ULL installation, BellSouth will coordinate implementation of INP with ULL installation.

Further, BellSouth agreed that the installation and service intervals for UNEs *"shall be the same as when BellSouth provisions such network elements for use by itself, its affiliates or its own retail customers."*[56]

In states where ACSI has submitted orders for ULLs and INP, BellSouth routinely has failed to provide these elements in accordance with the Act or applicable ACSI/BellSouth Interconnection Agreement standards. ACSI's problems in obtaining ULLs and INP from BellSouth fall into three categories:

(1) BellSouth's failure to acknowledge orders and provision them on a timely basis;

(2) extended periods of disconnected service during the transition from BellSouth to ACSI coupled with a failure to coordinate INP installation with ULL installation; and

(3) inexplicable disconnections and service quality problems (*e.g.*, static, noise and clicking) after service is installed.

As the following discussion illustrates, despite BellSouth's contention that it installs 98 percent of orders on time, ACSI's actual experience is that BellSouth is incapable of installing ULLs reliably at this time.

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[56] *ACSI/BellSouth Interconnection Agreement*, Section IV.E.3 (emphasis added).

***Order Commitment Delays.*** Despite repeated requests, BellSouth has not put in place firm provisioning intervals for (1) the time between placement of an order by ACSI and receipt of a "firm order commitment" ("FOC") from BellSouth, and (2) the time between receipt of an order and its implementation. Although BellSouth offered in December 1996 to provide FOCs within 48 hours of placement of an order and to provision ULLs within 5 days of an ACSI order, it has not agreed to amend the ACSI/BellSouth Interconnection Agreement to memorialize the commitment, and has not put the proposed intervals into practice. Indeed, BellSouth routinely fails to return FOCs within 48 hours and installations often occur well after five days.

Even when BellSouth provides a FOC, it often misses its own installation date. For example, in Florida, BellSouth missed the installation date for one customer (with 82 access lines) three times in one week. BellSouth originally promised installation on Wednesday, August 13, 1997, but failed to show up. The installation was rescheduled for Thursday, August 14 at 5 p.m., but cancelled at 4:30 that day, when ACSI was informed that an error had caused the order to be kicked out of the system. BellSouth then promised to install the lines the next day, Friday, August 15 at 9 a.m. By 10:00, however, the BellSouth technician had not yet arrived, and service was not connected until approximately noon that day.

***Disconnections During Customer Cutover Process.*** Problems with BellSouth's provisioning began with the very first orders ACSI submitted in its first service market, Columbus, Georgia. On November 19 and 20, 1996, ACSI placed its first three orders for ULLs. Each order involved the conversion of two or fewer POTS lines (the simplest possible cutover) coupled with a request for INP. ACSI submitted each of these orders manually in accordance with the process established in the ACSI/BellSouth Interconnection Agreement and BellSouth guidelines. Rather than coordinating these orders with ACSI, BellSouth *unilaterally* administered the cutover without contacting ACSI. Moreover, BellSouth completely failed to accomplish the cutover smoothly or seamlessly. Two of the initial three customers were entirely disconnected for 4-5 hours each. No outgoing calls could be placed, and persons calling the customer received an intercept message indicating that the number was no longer in service. The disconnection lasted approximately 50-60 times longer than the 5 minute interval called for in the ACSI/BellSouth Interconnection Agreement. The third customer was disconnected for the entire day on which conversion was scheduled, causing severe inconvenience and disruption to the customer.

Moreover, after the loop connection was established, ACSI learned that BellSouth had failed to implement INP as ordered. As a result, ACSI's new customers neither could dial out nor receive incoming calls on their lines. Calls dialed to the old (BellSouth) telephone number received an intercept message stating that the number had been disconnected. Because these customers were companies with a significant number of incoming calls from their customers, BellSouth's failure to provision INP substantially disrupted their business.

The severity of these initial problems forced ACSI to suspend its submission of ULL orders in order to preserve its own business goodwill.[57] At the same time that ACSI instructed BellSouth to place pending orders on hold, BellSouth unsuccessfully attempted to install ULLs for three additional ACSI customers. Service for each of these three customers was disconnected several times while BellSouth attempted to provision ULLs, but ultimately

[57] Several months later, ACSI was forced to take the same action in Alabama.

the cutover attempts were abandoned and the customers were reinstated as BellSouth local service customers.

Ultimately, ACSI filed two formal complaints — one with the FCC and one with the Georgia PSC — as a result of its Georgia experience. Both complaints are pending before the respective commissions.[58] Despite the fact that it has been over ten months since ACSI filed its first complaint, BellSouth continues to routinely miss installation intervals.[59] Indeed BellSouth continues to greatly exceed the 5-minute cutover interval established in the ACSI/BellSouth Interconnection Agreement and disruptions exceeding two hours are not uncommon.[60] This experience is consistent with ACSI's experience in Montgomery and Birmingham, Alabama, where ULL cutovers of an hour to two hours remain commonplace. BellSouth also is routinely starting cutovers later than promised. This lack of punctuality exacerbates lengthy disruptions that occur once installation begins.

Since the disastrous beginning in Georgia, ACSI has experienced similar disconnection problems in several other BellSouth states. In Montgomery, Alabama, ACSI's largest customer had 22 lines disconnected due to BellSouth's inability to provision an ACSI

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[58] Public versions of ACSI's Initial Brief and Reply Brief in *ACSI v. BellSouth*, FCC File No. E-97-09, are attached hereto as Exhibits 1 and 2, respectively. ACSI's refiled Georgia PSC complaint against BellSouth, styled *Complaint of American Communication Services of Columbus, Inc. Against BellSouth Telecommunications, Inc. Regarding Access to Unbundled Loops*, Georgia PSC Docket No. 7818-U, hereafter, ("*ACSI Georgia PSC Complaint*") is attached hereto as Exhibit 3.

[59] *See ACSI Georgia PSC Complaint*, at Exhibit B (chart showing BellSouth's performance in provisioning ULLs during a sample interval taken in mid-April 1997)

[60] *Id.* Significantly, BellSouth's performance reports do not document such problems as BellSouth's performance standards only measure due dates met. Despite ACSI's repeated requests, BellSouth refuses to report the number of customers cutover in 5 minutes or less, as is required by the ACSI/BellSouth Interconnection Agreement.

order. In that case, ACSI placed a "to and from" order, in which it requested that a trunk be disconnected and replaced with other facilities. The connect portion of the order was halted in the system due to a lack of facilities. However, the disconnect was *not* halted, and the customer had the trunk disconnected with no facilities installed to replace it. By 4 p.m. the following day, BellSouth had restored to service only some of the customer's 22 lines.

In sum, BellSouth's inability to avoid lengthy disconnections during the customer cutover process jeopardized ACSI's ability to retain existing customers and to attract new customers to its service. ACSI cannot compete with BellSouth if its customers must endure service outages routinely exceeding 4 hours — or if ACSI is made to appear unable to switch a customer to its service.

***Post-Cutover Disruptions.*** Unfortunately, BellSouth's provisioning problems do not stop once the initial cutover has been completed. In fact, once service is established, it is often provisioned improperly (resulting in poor service quality) or disrupted without warning or explanation. One example of an ACSI customer affected by such provisioning problems involves a restaurant chain with a total of five locations in Columbus, Georgia. The restaurants take orders by phone, and have a substantial volume of take-out business during the dinner hour. On Friday, February 21, 1997, just prior to the start of the dinner hour, service to the restaurants was disconnected without warning or explanation, causing them to lose their customary take-out service orders. Service was disconnected at all five locations for approximately two hours. Shortly after the unexpected service disconnection, the restaurant chain terminated service with ACSI and returned its business to BellSouth.

A second example involved an insurance firm in Georgia. Service to this customer, which also suffered disruptions during its initial ULL installation, was disconnected on the evening of Friday, February 21, 1997. Again, neither ACSI nor the customer received any warning that the disruption would occur, nor were they given any explanation at the time as to the cause of the problem. This disconnection was particularly disruptive because the customer regularly receives faxes from its home office on Friday evenings. Thus, the disconnection prevented the customer from receiving those faxes on that Friday. As a result of the disconnection, the customer terminated service with ACSI and returned its business to BellSouth.

Yet another example demonstrating BellSouth's post-cutover provisioning problems involved a Georgia retailer. This customer had its service disconnected on February 24, 1997. Service was disconnected in the late afternoon and was restored within an hour only after aggressive efforts by ACSI employees to restore service promptly. BellSouth has admitted that this disruption was the result of an error by a BellSouth employee.

BellSouth's provisioning problems extend beyond Georgia and are not limited to ULL installation.[61] For example, one of ACSI's interconnection trunks in Birmingham, Alabama was installed with the wrong line signalling. This BellSouth provisioning error caused service quality problems for ACSI's customers, including noise, clicks and cutoffs. Significantly, it also decreased modem speeds on lines served by the trunks, which is a key

[61] One likely reason for this is that CLECs are served by the same BellSouth LCSC, regardless of the BellSouth state in which the provisioning takes place. For example, ACSI's orders are processed by the Birmingham LCSC, regardless of whether they are for ULLs in Georgia or interconnection in Louisiana.

service requirement for many of ACSI's ISP customers. When BellSouth attempted to solve the problem by provisioning a redesigned trunk, ACSI's service was significantly disrupted for one and one-half hours. During this period, ACSI's customers could not make calls to any number served off the Homewood tandem in the Homewood section of Birmingham.

Customers in several states in the BellSouth region also have complained of excessive volume losses on lines provisioned to ACSI by BellSouth. ACSI has experienced this problem in Georgia, Kentucky and Alabama. Upon investigation it has been determined that the volume loss is the result of a BellSouth decision to engineer the line with up to an 8 decibel volume loss. As a result, ACSI receives inferior service, which has caused ACSI to lose customers.

BellSouth's INP provisioning also has been beset with errors. ACSI has experienced acute problems with INP that have led to lengthy service disruptions across roughly 90 percent of ACSI's customer base in Georgia. On several occasions, ACSI customers suddenly had their number portability terminated and, as a result, incoming calls received false busy signals. ACSI first experienced this problem on April 21, 1997, during an attempt to port four lines for an ACSI customer. INP was delayed for approximately one hour while BellSouth attempted to resolve undisclosed provisioning problems. Two days later, on April 23, 1997, ACSI was deluged with calls from across its customer base reporting that, although they could make outgoing calls (as they did to complain to ACSI), all incoming calls were receiving a busy signal. This outage occurred for approximately one and one-half hours. One month later, on May 22, 1997, ACSI again began receiving reports of "false busies" and customers' inability to receive incoming calls. This time, it took BellSouth approximately two hours to correct the problems.

As explained by BellSouth in lengthy discussions with ACSI, these outages emanated from BellSouth employee miscues in setting the Simulated Facilities Group ("SFG") parameters in its Columbus, Georgia Main 1AESS switch. BellSouth explained that SFG is a required field in its switch translator programming that is needed to establish remote call forwarding (BellSouth's interim INP method). The SFG field tells the switch how many incoming paths are allowed to be ported to a particular telephone number. According to BellSouth, the Columbus, Georgia Main 1AESS switch has an upper limit of 256 SFGs per switch, although BellSouth apparently reset it to be "unlimited". The April 23 outage occurred when a BellSouth employee reset the SFG to zero, making it impossible for ACSI customers to receive incoming calls. Then, the outage re-occurred on May 22 when a BellSouth employee again inexplicably reset the SFG, this time to 10 (meaning that only 10 ported numbers could be accommodated off that switch). To ACSI's surprise and dismay, and despite BellSouth's alleged precautions, similar problems have recurred in recent months.

The cumulative effect of BellSouth's provisioning problems is illustrated by ACSI's experience with a Georgia auto parts dealer. The customer had a total of eight locations, served by 37 access lines and had agreed to switch to ACSI, with nine lines to be served by ULLs and the remaining 28 served via resale. BellSouth initially failed to provide due dates for provisioning these lines, forcing ACSI to escalate the matter with BellSouth. When BellSouth finally provisioned the order, lines for two locations were crossed, causing considerable confusion and disrupting the customer's business. Shortly thereafter, the customer (along with nearly all of ACSI's customers in Columbus, Georgia) experienced false busy signals as a result of BellSouth's number portability errors. Understandably frustrated by these problems, the customer attempted to return to BellSouth, but reversed its decision when BellSouth made several unsuccessful attempts to re-provision BellSouth local service. ACSI agreed to intervene on the customer's behalf, and the customer agreed to continue using ACSI's service. Nevertheless, the customer continued to experience other service disruptions caused by BellSouth. As a result of BellSouth's continuing and long-term provisioning problems, the customer finally switched from ACSI back to BellSouth.

### B. BellSouth Has Failed to Provide Local Exchange Services for Resale or Access to Telephone Numbers in Accordance with the Act

ACSI began providing switched local exchange service to some of its customers through the resale of BellSouth's end-user local exchange services in April 1997. Since that time, BellSouth's inability to provide ACSI with services for resale at parity with the services provided to BellSouth end-users has directly impeded ACSI's ability to win and retain customers in Louisiana.

Indeed, in ACSI's experience, it routinely takes BellSouth as long as 14 days to fill even the simplest resale orders, and BellSouth often takes 20-30 days to provision more complex services. This is far longer than is acceptable in a competitive environment. Moreover, BellSouth repeatedly has refused to divulge its actual intervals for providing service to BellSouth customers, and only recently has committed to provisioning intervals for ACSI customers. However, ACSI's experience has been that these intervals are not average intervals, and they fail to provide information upon which ACSI and its customers can rely. As a consequence, potential ACSI customers have cancelled their plans to switch to ACSI due to excessive installation intervals and provisioning problems caused by BellSouth. Other customers have signed up for ACSI service and have since returned to BellSouth due to BellSouth's delays and problems in provisioning services for resale to ACSI.

In sum, BellSouth's claim that it provides services for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3) simply does not reflect the reality that ACSI has encountered in the Louisiana marketplace. To illustrate and underscore the degree to which BellSouth is incapable of providing resale services to ACSI at parity with its own retail operations, ACSI provides the following examples. The first of these examples also suggests that BellSouth is not yet ready or willing to provide nondiscriminatory access to telephone numbers as required by the checklist.

***Louisiana Example 1.*** On June 24, 1997, ACSI placed an order for eight telephone lines and three vanity telephone numbers for one of its customers, a New Orleans television station. The completion of this order was particularly urgent because it was the final step in the station's establishment of a weather hotline for the upcoming hurricane season. On July 11, over two weeks after the original inquiry, BellSouth informed ACSI that the requested vanity numbers were not available. ACSI, in turn, informed its customer.

On July 14, ACSI received a letter from the customer explaining that, out of curiosity, he called BellSouth himself to double check on the availability of the vanity numbers he requested and was informed that the vanity numbers were available and had been since June 14. ACSI then contacted BellSouth and received a completion date of July 23. However, installation was not completed until July 31.

In September, the same customer began experiencing problems with one of its vanity numbers. Some viewers were dialing a zero instead of the letter "O" in that number and, as a result, were reaching the wrong number. Wanting to decrease the volume of wrong calls, the station decided to add a new vanity number that included the station's call letters in its suffix. On September 29, 1997, ACSI reserved a certain telephone number with the desired suffix. On October 15, two weeks later, BellSouth informed ACSI that the requested number was not available. ACSI, in turn, informed its customer. Once again the customer double checked with BellSouth as to the availability of its requested vanity number. This time, the customer learned that the requested number was not available at the moment, but that it would be available on November 1, if the current user of that number did not request to re-establish use of it.

On October 16, ACSI faxed BellSouth to re-reserve the requested vanity number and also to reserve an alternate number. BellSouth claims it never received the order and suggested that it may have lost the order because it was in the process of moving. ACSI resubmitted the order to BellSouth on October 22. BellSouth responded that it would require an additional 48 hours to confirm whether the numbers were available. BellSouth finally provided a FOC date of Monday, October 27. On October 28, one day after the much delayed FOC date and nearly one month after ACSI placed the order, BellSouth completed the order.

***Louisiana Example 2.*** On August 22, 1997, ACSI placed an order with BellSouth to transfer an existing customer's (a real estate agent in Metairie, Louisiana) telephone service to a new location. ACSI received confirmation from BellSouth and a FOC date of August 27. On August 29, BellSouth's interconnection vendor reported to the customer's location to complete the installation, but he could not locate the lines. BellSouth reset the due date for September 9 (two weeks after the confirmed FOC date). Realizing that the customer would have already relocated by that date, ACSI opened a trouble ticket with BellSouth. BellSouth agreed to have a technician report to the customer's location on Saturday, August 30, to finish the work. No technician reported.

BellSouth eventually activated telephone service at the customer's new offices 6 days past its original confirmed due date. As a result, the customer was out of service from Friday, August 29, until halfway through Tuesday, September 2. On Wednesday, September 3, the customer wrote ACSI a complaint letter in which he called the transition "a nightmare" and "a mess" and explained that he lost hundreds of calls. To preserve its business goodwill, and to try to make up for the inconvenience caused by BellSouth's provisioning problems ACSI provided the customer with a credit for a month's worth of service.

While these two examples are admittedly anecdotal, they typify the experience ACSI has had with BellSouth across its region in implementing resale orders.

## C. BellSouth's OSS Is Deficient and Underdeveloped

ACSI believes that BellSouth's electronic OSS interfaces must be fully developed and capable of supporting entry by *both* resale and facilities-based competitors prior to its receiving authority to enter the in-region interLATA market. In order to compete effectively on a facilities-based basis, ACSI must have access to a proven electronic interface capable of handling large volumes of ULL orders in a nondiscriminatory manner.[62] BellSouth has yet to provide such an interface. Indeed, it remains the case that only initial ordering of ULLs is electronic at this time. As it currently stands, ACSI submits an electronic order to BellSouth, and BellSouth responds with an electronic FOC. All other functions, including keying the entry into BellSouth's legacy systems, pre-ordering, order tracking, billing, and repair and maintenance are handled manually.[63]

Despite BellSouth's claims to the contrary,[64] its continuing reliance on manual intervention for the ordering of ULLs and other checklist items does not result in the reliable, nondiscriminatory provisioning of OSS necessary to provide competitors with a meaningful opportunity to compete.[65] Manual intervention simply results in error rates that are too high and ordering capacity that is too low to support competitive local entry. Conceding this shortcoming, BellSouth is in the process of developing and making available its LENS and EDI interfaces[66]. However, these systems are in limited use and have not been sufficiently tested to ensure that they will provide the necessary functionalities in a

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[62] DOJ also has concluded that checklist compliance requires automated support systems. *DOJ Evaluation of SBC's Oklahoma Section 271 Application*, at 28.

[63] Thus, regardless of what BellSouth OSS interface is used, the functionality offered is hardly better than if the orders were submitted via facsimile or e-mail.

[64] *See BellSouth Brief*, at 31.

[65] *See DOJ Evaluation of SBC's Oklahoma Section 271 Application*, at 27.

[66] ACSI recently established the LAN-to-LAN connectivity with BellSouth that will permit the establishment of the LENS interface.

commercial setting. Critically, these systems currently have little or no capability to support the provisioning of ULLs, INP and other checklist items. BellSouth claims that EDI is the appropriate interface for ULLs and other elements not available through LENS. Yet, EDI is only just being tested by CLECs today and will not be in widespread commercial usage until next year. Thus, as with other critical interconnection arrangements, BellSouth must demonstrate proven performance and not just paper promises in order to comply with the Section 271 checklist requirement that access to OSS be provided on a nondiscriminatory basis.

### D. The Service Quality Problems Experienced by ACSI Are the Direct Result of BellSouth's Failure to Deploy Adequate Resources

ACSI believes that BellSouth's dismal record in provisioning interconnection, UNEs, INP and resale is the direct result of BellSouth's failure to deploy the necessary resources to meet its statutory and regulatory obligations. In March 1997, BellSouth commissioned an independent audit of the performance of its Birmingham, Alabama and Atlanta, Georgia LCSCs. The audit found that the LCSCs have an "alarming" level of errors, resulting from employees that are "not effectively trained," employees that are not "train[ed] and develop[ed] . . . to do the work right the first time," and a "passive management style" in which "persistent problems tend to continue before corrective action is taken [and such action] often deals only with the symptoms rather than root causes of the problem."[67] The

[67] *Analysis Conducted for BellSouth — LCSC; Atlanta, GA — Birmingham, AL; March 3, 1997 — March 13, 1997*, at 2772-73, 2790, 2798 (attached hereto as Exhibit 4) (hereinafter, *"Independent Audit"*). The *Independent Audit* was first obtained on a confidential basis during discovery in ACSI's Georgia formal complaint proceeding before (continued...)

conclusions found in the Independent Audit are direct and fatal to BellSouth's claims of compliance here. Indeed, the auditors summarized their findings as follows:

> Our evaluation of [BellSouth's] basic work processes in both resale and unbundled, indicated they lack process documentation, compliance, and the accuracy to provide a predictable, high quality output. We repeatedly observed employee skills deficiency and errors which [are] negatively impacting both productivity and quality. [BellSouth's] current level of quality is unnecessarily low. Due to numerous operating problems, training deficiencies and process non-compliance, this level of quality is inflating your operating costs per order, and contributing to delays in customer service. The current level of errors is alarming . . . . These quality problems and errors are recurring several times per day without supervisory awareness or corrective action.[68]

The conclusions made in the Independent Audit address all aspects of LCSC performance — management, employee training and skills, and ordering and provisioning problems — and confirm that the BellSouth LCSCs are plagued with numerous systemic problems which cause an unacceptable pattern of errors and delay. To highlight the deficiencies found in the Independent Audit, *direct quotations taken from the Independent Audit* appear in the chart directly below.

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[67](...continued)
the FCC and recently became public during BellSouth's Section 271 proceeding before the Florida Public Service Commission.

[68] *Id.* at 2773.

| *LCSC Ordering and Provisioning* |
|---|
| This level of ineffective utilization is a result of unclear expectations, employee skills deficiencies, the lack of process documentation and control over the work flow. . . . Excessive errors and rework are lowering the quality of your service due to missed dates and excessive lead times. The root causes of these problems continue without supervision identifying the problems or developing corrective action strategies.[69] |
| Our evaluation of your basic work processes in both resale and unbundled, indicated they lack process documentation, compliance, and the accuracy to provide a predictable, high quality output.[70] |
| We repeatedly observed employee skills deficiency and errors which is negatively impacting both productivity and quality.[71] |
| Your current level of quality is unnecessarily low. Due to numerous operating problems, training deficiencies and process non-compliance, this level of quality is inflating your operating costs per order, and contributing to delays in customer service.[72] |
| We observed little time devoted to preemptive action to keep problems from occurring or recurring. This "fire fighting" technique results in an approach to problem solving where supervisors address only the symptoms of the problem.[73] |
| Due to various operating, training and quality problems which are not being resolved, your current level of labor utilization is inflating your operating costs, and building excessive lead-times into your order process.[74] |

[69] *Id.* at 002773.

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.* at 002776.

[74] *Id.* at 002790.

| *LCSC Ordering and Provisioning* |
| --- |
| In your LCSC environment, the clarification requests seem to be used as a "fail safe" to catch quality problems and missing input information prior to order processing. We noted situations in which every portability order required clarification due to missing information. . . . Management is not aware of this condition and is not gathering the data necessary to develop a corrective action strategy with the account teams to solve the problems before they hit the LCSC and force lost time into your operation.[75] |
| We observed different methods being used by multiple employees to perform the same task. This resulted in significant variances in both quality and productivity. This frequently results in errors and rework as vital steps of the process are missed and must be corrected after the fact. This is impacting your customer service and unnecessarily inflating your order processing time.[76] |
| Instead of training and developing your people to do the work right the first time, you rely on rework to find errors. These activities do not add value and unnecessarily inflate your operating cost and order lead times.[77] |

[75] *Id.* at 002791.

[76] *Id.* at 002797.

[77] *Id.* at 002798.

| *Training and Skills* |
|---|
| Your employees are not effectively trained to maximize their skills and productivity. These training deficiencies are having a negative impact on both service and quality. We noted that employees must rely upon fellow employees to resolve training needs without the direction nor participation of the supervisors.[78] |
| Many of your key jobs have insufficiently trained people to assure that employees can be assigned to meet volume requirements. This situation is especially acute as you look forward toward your anticipated ramp up of operations at the LCSC.[79] |
| Our studies indicate that only 48% of the key jobs have employees who are qualified to perform their functions effectively.[80] |
| According to their supervisors, 35% of the jobs have employees who are marginally qualified to perform the tasks. Marginal means they are only able to perform selected functions of a total order processing flow without constant follow up. This is a key point, since we saw very little training of employees by the supervisors during our studies.[81] |

[78] *Id.* at 002773.

[79] *Id.*

[80] *Id.* at 002797.

[81] *Id.*

| *LCSC Management* |
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| We concluded that supervisors spend very little time guiding, coaching, or training their people. They also have very limited control over the work flows and processes. We determined that most of their contact with their people was initiated by the employees and was generally spent in a reactive "fire fighting" mode. We did not observe any supervisor spending time training their employees or recognizing a job well done.[82] |
| [Y]our supervisory level has a poor understanding of the concepts of proactive supervision, organizational development, and systems utilization. We believe this passive management style is a result of a lack of an effective management operating system in LCSC which would support their efforts to resolve operating problems and address training needs. We also noted the absence of management training programs which provide them with the skill sets necessary to function effectively in a start up operation such as LCSC.[83] |
| Your LCSC management systems contain fragments of most of the basic elements required to control an order entry operation. However, although many of the elements exist, they will require significant upgrades to make them effective management tools. Those elements which could be effective such as assignment controls are not being used by management to identify root causes of productivity, quality and service problems.[84] |
| Diagnostic assessment indicates that your supervisors have a poor understanding of the concepts of effective supervision.[85] |
| Supervisors very rarely follow up on work in process. This lack of supervisory involvement has left your employees to solve most problems by themselves. . . . As a result, persistent problems tend to continue before corrective action is taken, and it often deals only with the symptoms rather than root causes of the problem.[86] |

BellSouth's Application is understandably silent on the subject of the Independent Audit. In response to the scathing audit report described above, BellSouth hired the auditor

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[82] *Id.* at 002772.

[83] *Id.*

[84] *Id.*

[85] *Id.* at 002781.

[86] *Id.* at 002790.

to improve its LCSC performance. As damaging as the initial audit is, the auditor's subsequent reports contain no discernible or quantifiable findings that can be relied on to demonstrate that BellSouth has remedied the problems at its LCSCs.[87]

Among the few conclusions that can be made from the auditor's reports documenting the implementation of their corrective plan is that BellSouth still rejects competitors' service requests at an alarming rate. The latest available figures reveal that 64.6 percent of AT&T's and MCI's requests are rejected as being in need of clarification.[88] Equally disturbing are the auditor's findings that (1) these orders had to be resubmitted an average of 1.7 times in order to complete processing, and (2) "[t]he amount of time that is required to process an order is more than twice what it should take . . . ."[89]

Finally, the auditor's reports place a heavy emphasis on improvements made in BellSouth's ability to supply FOCs ("to FOC orders") within 48 hours. The latest figures on that account are remarkable in that they reveal only a 79 percent success rate.[90] Tellingly, this arbitrary measurement category (FOCs within 48 hours) is not accompanied by any data that shows that such provisioning is nondiscriminatory. Indeed, it is difficult to imagine that it takes BellSouth two days to confirm its own orders. It is even more difficult to conceive

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[87] The auditor's subsequent reports and letters to BellSouth also became part of the record in BellSouth's Section 271 proceeding in Florida. These documents are attached hereto as Exhibit 5 and are referred to hereinafter as *"Post-Audit Reports"*. Individual reports are identified by date.

[88] *Post-Audit Reports: July 8, 1997 Letter*, at 2 (attached hereto as part of Exhibit 5).

[89] *Id.*

[90] *Post-Audit Reports: August 15, 1997 Letter*, at 4 (attached hereto as part of Exhibit 5).

of situations — much less situations that occur in a greater than one in five rate — in which it would take BellSouth more than two days to confirm a customer's order.

### E. BellSouth's Refusal to Pay Reciprocal Compensation for ISP Traffic Retards Competition for Local Internet Access

"Local Traffic" is defined by the terms of the *ACSI/BellSouth Interconnection Agreement* to mean "telephone calls that originate in one exchange and terminate in. . . the same exchange. . ."[91] There are no exclusions for local calls placed to Internet Service Providers ("ISPs"). A number of such ISPs have elected to subscribe ACSI's services. Their customers reach them by dialing a local call. If calls are placed to such an ISP by a BellSouth local exchange customer, BellSouth routes the traffic to ACSI for transport and termination. However, BellSouth has notified ACSI that it will refuse to pay reciprocal compensation for the transport and termination of local calls placed to ISPs.[92] As the Commission is aware, FCC rules classify calls placed to ISPs as local calls which are ineligible for assessment of interexchange access charges. Thus, unless ACSI is paid reciprocal compensation by BellSouth, it will be unable to recover the cost of transporting and terminating calls placed to its ISP customers. Obviously, ACSI cannot sustain these losses indefinitely. Unless BellSouth is compelled to pay reciprocal compensation for ISP traffic, ACSI will be effectively driven from the fast-growing market for ISP services. More importantly, through its anticompetitive refusal to deal, BellSouth will have effectively reserved the ISP submarket for itself.

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[91] *ACSI/BellSouth Interconnection Agreement*, AH. B at p. 7.

[92] The lost revenue to ACSI exceeds $100,000 monthly and is growing quickly.